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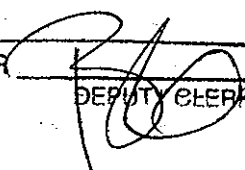
IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA
SCRANTON, PENNSYLVANIA

PHAN HUE, : NO. 1:CV-01-1064
Plaintiff :
 : (Judge Kane)
VS. :
 : (Magistrate Judge Smyser)
JAMES UPDIKE, JOSEPH MATALONI :
EDWARD O'BRIEN, DALE HAZLAK : JURY TRIAL DEMANDED
Defendants. :

FILED
SCRANTON

APR 16 2002

MOTION FOR APPOINTMENT OF
COUNSEL, TITLE 28 U.S.C.A. §1915 (d) (e)

PER 
DEPUTY CLERK

Now Comes before this Honorable District Court, "Phan Hue", who is the complaintiff in said caption above. Who request this courts evaluation and its discretion to appoint counsel so that the merits of this case will not be deflected and ignored by this court. "Jury Trial is Demanded".

- 1) There are a number of matters in which need to be addressed in this court. The complaintiff is Informa Pauperis 1915 (d). And is handicapped by his lack of understanding of the English language. The complaintiff is at this time being helped by myself

Anthony Rish, an inmate at S.C.I. Retreat. It is very hard to understand the full nature of these proceedings. Due to the inability of Phan Hue's speech impediment in English and the fact that I don't speak any vietnamese. I am also going home on April 12, 2002.

- 2) There have been a number of requests by the defendant's attorney's and the district court, regarding materials on discovery F.R.C.P. 26 (c). The complexity will alone diminish these claims for proper discovery.
- 3) This case involves a number of individual who refused to give fair medical treatment to one of it's patient's namely, "Phan Hue". A complete back ground check of their professional conduct needs to be established, whether other complaints have been filed against the above named persons. Like from other institutions that they had worked or had been removed from, and an investigation of any criminal or civil matters against above mentioned persons. Deliberate indifference is part of the nature in the Eight Amendment violations, and Phan (complaintiff) was given a misconduct for not working. The above named defendants pretended that nothing was wrong with Phan Hue and they were very wrong.
- 4) The need for appointment of counsel would benefit both the court and the complaintiff with a fair trial. 14th Amendment United States Constitution, Equal protection.
- 5) Nance Vs. Vieregge, 144 F.3d 589, A complaint may not be dismissed unless no relief could be granted "under any set of facts that could be proved consistent with allegations". Hishon Vs. King & Spalding, 104 S.Ct. 2229. Conley Vs. Gibson, 78 S.Ct. 99. The

hardship of an inmate with out any medical assistance. So called loyal professionals who refuse a person reconstruction operation to his rotator cuff. Four muscles in which need attention and then to cut off his medication. And Mr. Hazlak in writing a misconduct to a person in a sling, with very limited use of the said arm, "right shoulder".

- 6) An outside specialist had stated that Phan (complaintiff) would need an operation to fix the damage. Phan was then forced to work in the kitchen and then on the block as a result of the misconduct written by Mr. Hazlak. Mr. Joseph Lengyel, the inmate grievance coordinator has been removed from this institution due to possession of pornographic material (Adult and Child) on 3/06/02. See attached Exhibit of R 35 for an outside view by a doctor. This would clear up the medical factor to clarify the needed medical treatment.
- 7) The Eighth Amendment also protects against future harm to an inmate. See Helling Vs. McKinney, 113 S.Ct. 2775. Even the innocent facts of a person who was convicted of a crime. That is why the courts created the appeal process. The presumptions of innocence to be treated so prejudicely. A non English speaking person.
- 8) U.S. Febus, 218 F.3d 784, The act required that the court provide an interpreter for a defendant who primarily speaks a language other than english, 28 U.S.C. §1827(d)(1)(a) its purpose is to ensure that the defendant can comprehend the proceedings and to communicate effectively with counsel. U.S. Vs. Sanchez, 928 F.2d 1450. How many people will speak vietnamese during this trial, Phan does and is

requesting a trial to resolve his arguments.

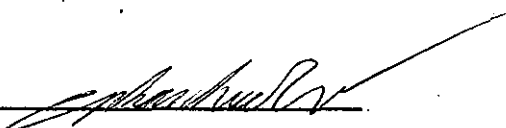
- 9) In prison a individual only has superiors who must act reasonably and not as to conspiracy and neglect their duties as to false information when it comes to adjusting matters, when someone has been injured. Phan Hue fell in the kitchen while he was mopping up. The floor was wet at the time. It was the awkward way the he had fallen that damaged the area of his right shoulder. "Defendant's Attorney's know of a Second Grievance No. 0185-00".
- 10) Phan Hue should have received the operation on his shoulder here, and the medical department should have scheduled him for further x-rays and examinations and not to be cheap with their spendings. To cheat someone of medical care and attention.
- 11) Tabon Vs. Grace, 6 F.3d 147, courts generally should consider the plaintiff's education, literacy, prior work experience, and factors such as the plaintiff's ability to understand english. See Castillo Vs. Cook County Mailroom Dept., 990 F.2d 304 (instructing district courts to appoint counsel on remand to present indigent plaintiff who had difficulty with the English language, who was hampered by his confinements, and the lack of the use of typewriters and computers. The case at bar Phan Hue does not know how to operate the said machines in the English language. He can not even read the English Alphabet, only in vietnamese.
- 12) Luttrell Vs. Nickle, 129 F.3d 933, as to the representation of legally inclined with case laws and background experience with conducting ones own defense to establish their side of the story. Luttrell was denied counsel because he was involved with law, a jail house

lawyer. See Exhibit of my affidavit. I did Phan's legalwork, and it's a violation to correspond with him, because I was an inmate. A breech of the Department of Corrections Security.

- 13) See a number of cases in support of Hamilton Vs. Leavy, 117 F.3d 742, colorable claims. Plummer Vs. Grimes, 87 F.3d 1032, factual and legal complexity, Existence of conflict testimony, ability to press his claims. Id. at 852 In re Lane 801 F.2d 1040-43,44, Plummer's case was not complex enough to warrant appointment of counsel. Check out the defendant's discovery materials requested and the institution has them all and Phan has to file his own motion for discovery.
- 14) Interlocking the Unit Manager, Mr. Hazlak, Sandin Vs. Conner, 515 U.S. 472, (1995), does not preclude prisoners from suing prison guards for retaliating against them for filing grievances or from issuing bogus misconducts. In law, the concept of "grievance" by a prisoner is equated with the exercise of First Amendment rights. Graham Vs. Henderson, 89 F.3d 75, Rivera Vs. Chesney, 1998 U.S. Dis. Lexius (ED Pa. 1998).
- 15) The Plaintiff is seeking monetary damages as well as an operation. And if the court finds punitive damages, so that this will not happen to any one else. A lot can be achieved if counsel is appointed. Ruck Vs. Boergerman 57 F.3d 978, circumstance with particular emphasis upon certain factors that are highly relevant to a request for counsel. See U.S. Vs. Cronic, 104 S.Ct. 2039, counsel is not a luxury and factors regarding match skills of the prosecution. Here we have a civil matter matched skill of the defendant's attorney's. Phan has a 3.6 grade

reading and writing. See Second Exhibit, "letter by Phan Hue".

Wherefore the plaintiff prays that this district court does grant appointment of counsel, §1915 (d) and that it finds in it's discretion the necessity for counsel, §1915 (e). And grant to amend original complaint to specify in dept of Eighth Amendment violations.



Phan Hue, DY-0577
660 State Route 11
Hunlock Creek, PA 18621

Dated: _____

4-14-02

IN THE U.S. DISTRICT COURT, MIDDLE DISTRICT OF PA.

PHAN HUE, PLAINTIFF, : CIVIL NO. 1:CV-01-1064
V. : (JUDGE YVETTE HAN)
JAMES UPDIKE, JOSEPH : (MAGISTRATE JUDGE SMYSER).
MATALONI, EDWARD O'BRIEN,
DALE HAZLAK, DEFENDANTS, : JURY TRIAL DEMANDED

AFFIDAVIT OF ANTHONY RISH

I, Anthony Rish a "jailhouse lawyer," does now respectfully alter this Honorable Court that I can no longer help the above named Plaintiff, nor assist him any longer in the above captioned case and avers the following:

As of April 12th, 2002 I, Anthony Rish will be released from custody. Phan Hue is not competent enough to move forward without assistance in this case. Phan Hue is not learned in the English language, nor does he understand the legal systems numerous laws, rules, filing procedures and has no one else to assist him in his plite for justice.

It is understood by me, Anthony Rish, that Civil litigants do not have a Constitutional right to counsel. See Luttrell v. Nickel, 129 F.3d 933; Donald v. Cook County Sheriff's Dept., 95 F.3d 548; Farmer v. Haas, 990 F.2d 319. Simply, the presence of counsel in Phan Hue's case is a requirement or Phan Hue will never see the ends of justice met, nor will he get the necessary medical treatments he desperately needs or he becomes permanately physically damaged.

Phan Hue's plea for help from this Court must not go unheard. This Court should establish a connection to the physical and moral needs of Phan Hue. The rule and laws of this Country are created to force responsibility on those that trespass against another's Constitutional rights and its protections. Being an "inmate" does not deminished Phan Hue's physical pains and, the deliberate indifference of the named Defendants'. Any attempt on Phan Hue's part to represent himself will no doubt be unsuccessful.

Now, I respectfully move this Court to appoint counsel for the Plaintiff and take personal responsibility to have justice met.

DATED: April 8, 2002

RESPECTFULLY BY: Anthony Rish

Civil NO. 01-CV-1064

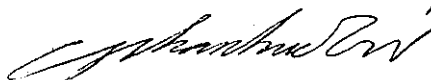
Judge Kane

Magistrate Judge Smyser

Thưa quan tòa tôi không biết viết hay nói tiếng anh
rành, cho nên hôm nay tôi viết mấy hàng chữ này mong
rằng sẽ có người dịch lại cho quan tòa.

- Như quan tòa đã biết tôi bị té trong khi làm việc
ở nhà bếp, vai tôi bị trật hay bể ở phía trong không
biết, cả mũi lún tôi vỡ cánh tay lên và hạ xuống thì
tôi nghe rất rất ở phía trong xương. Khi ngủ tôi ló
lần mình thì vai tôi rất đau. Tôi nhớ rằng khi té
họ chở tôi ra nhà thương ở bên ngoài. Bác sĩ có nói
rằng tôi cần phải gặp Bác sĩ chuyên môn về xương. C.O.
chở tôi về và nói lại Bác sĩ ở trại. Bác sĩ ở trại
có nói với tôi rằng họ sẽ liên lạc cho tôi biết. Tôi
đợi cho đến hai tháng sau không ai chở tôi trị bệnh. Tôi
có viết mấy lần request và mấy lần grievance kết cuộc
cũng không hữu hiệu. Ngay tôi bị té từ 2-28-2000
cho đến nay vai tôi cũng không được chữa. Tôi muốn
gặp quan tòa để quan tòa thấy vai tôi nên chữa hay
không? Tôi chỉ muốn quan tòa để tay lên vai tôi
khi tôi đỡ lên đỡ xuống để quan tòa nghe tiếng rất
rất trong xương của tôi rất đau, đau lắm khi tôi
bung vọt nặng. Tất cả những gì nói trên đều hoàn
toàn sự thật mong quan tòa xét xử cho tôi càng
sớm càng tốt. Thành thật cảm ơn quan tòa.

HUE PHAN DY0577



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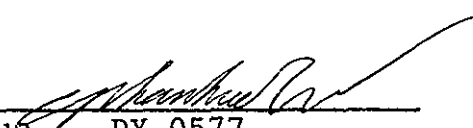
CERTIFICATE OF SERVICE

I, Phan Hue, "Complaintiff", do hereby certify that on this date I served a copy of the forgoing **MOTION FOR APPOINTMENT OF COUNSEL** by placing the same in the United States Mail, first class in Hunlock Creek, Pennsylvania, addressed to the following:

Alen S. Gold, Esq.
Monaghan & Gold P.C.
7837 Old York Road
Elkins Park, PA 19027

Marsha Davis
55 Utley Drive
Camphill, PA 17011

Middle Distric Clerk's office
235 N. Washington Ave.
P.O. Box 1148
Scranton, PA 18501


Phan Hue, DY-0577
660 State Route 11
Hunlock Creek, PA 18621

Dated: 4-14-02